

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 1:18CR123-RDA-2
	)	
ELMER ZELAYA MARTINEZ,	)	
a/k/a “Killer,” “Morenito Martinez,”	)	
“Danilo Perez,” and “Chucho,”	)	
	)	
Defendant.	)	

**NOTICE OF INTENT TO SEEK A SENTENCE OF DEATH**

The United States of America, by and through its attorneys, hereby notifies the Court and the defendant, ELMER ZELAYA MARTINEZ, and the defendant’s counsel, pursuant to 18 U.S.C. § 3593(a), that in the event of the defendant’s conviction on any of Counts 5–8 of the Second Superseding Indictment, wherein the defendant is charged respectively with murder in aid of racketeering activity, in violation of 18 U.S.C. §§ 1959(a)(1) and 2 (Counts 5 and 6); and kidnapping resulting in death, in violation of 18 U.S.C. §§ 1201(a)(1) and 2 (Counts 7 and 8), the United States believes that the circumstances of each offense is such that a sentence of death is justified, and the United States will seek a sentence of death.

**I. STATUTORY THRESHOLD FINDINGS UNDER 18 U.S.C § 3591(a) FOR COUNTS 5 AND 7**

The United States will seek to prove the following statutory threshold findings to establish the defendant’s eligibility for the imposition of the death penalty in relation to Counts 5 and 7 pertaining to the kidnapping and murder of E.E.E.M.:

- A. The defendant, ELMER ZELAYA MARTINEZ, was 18 years of age or older at the time of the offenses. 18 U.S.C. § 3591(a).

- B. The defendant, ELMER ZELAYA MARTINEZ, intentionally killed E.E.E.M. 18 U.S.C. § 3591(a)(2)(A).
- C. The defendant, ELMER ZELAYA MARTINEZ, intentionally inflicted serious bodily injury that resulted in the death of E.E.E.M. 18 U.S.C. § 3591(a)(2)(B).
- D. The defendant, ELMER ZELAYA MARTINEZ, intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and E.E.E.M. died as a direct result of such act. 18 U.S.C. § 3591(a)(2)(C).
- E. The defendant, ELMER ZELAYA MARTINEZ, intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life, and E.E.E.M. died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

## **II. STATUTORY AGGRAVATING FACTORS UNDER 18 U.S.C. § 3592(c) FOR COUNTS 5 AND 7**

The United States will seek to prove the following statutory aggravating factors to justify the imposition of the death penalty against the defendant in relation to Counts 5 and 7 pertaining to the kidnapping and murder of E.E.E.M.:

- A. The death of E.E.E.M. occurred during the defendant's, ELMER ZELAYA MARTINEZ's, commission of the offense of kidnapping (18 U.S.C. § 1201). 18 U.S.C. § 3592(c)(1).
- B. The defendant, ELMER ZELAYA MARTINEZ, committed the offenses in an especially heinous, cruel, or depraved manner in that they involved torture and serious physical abuse to E.E.E.M. 18 U.S.C. § 3592(c)(6).

- C. The defendant, ELMER ZELAYA MARTINEZ, committed the offenses after substantial planning and premeditation to cause the death of E.E.E.M. 18 U.S.C. § 3592(c)(9).

**III. OTHER NON-STATUTORY AGGRAVATING FACTORS UNDER 18 U.S.C. § 3593(a) AND (c) FOR COUNTS 5 AND 7**

The United States will seek to prove the following non-statutory aggravating factors to justify the imposition of the death penalty against the defendant in relation to Counts 5 and 7 pertaining to the kidnapping and murder of E.E.E.M.:

- A. The defendant, ELMER ZELAYA MARTINEZ, engaged in a pattern of criminal activity, including a pattern of violence, threats of violence, and related acts, as demonstrated by, but not limited to, the following aggravating factors:
1. In and around the summer of 2016, the defendant, ELMER ZELAYA MARTINEZ, assaulted and stabbed individuals who he believed were rival gang members.
  2. In and around the summer of 2016, the defendant, ELMER ZELAYA MARTINEZ, kidnapped S.A.G. for the purpose of murdering him. However, S.A.G. was able to escape.
  3. On or about September 26, 2016, the defendant, ELMER ZELAYA MARTINEZ, conspired to kidnap and murder, and did kidnap and murder, S.A.A.T. because the defendant, ELMER ZELAYA MARTINEZ, and other members and associates of MS-13 believed that S.A.A.T. was cooperating with law enforcement.
- B. The defendant, ELMER ZELAYA MARTINEZ, committed the offenses in part to increase or maintain his position in MS-13.

- C. The defendant, ELMER ZELAYA MARTINEZ, has displayed no remorse for the offenses, as demonstrated by his actions and words, including, but not limited to, celebrating the death of E.E.E.M. and bragging about killing him.
- D. The defendant, ELMER ZELAYA MARTINEZ, poses a future danger to others in that he is likely to commit, and direct others to commit, additional acts of violence in any setting, including acts of violence and threats of violence against witnesses who may testify against him in the future and against prison guards and other officials at institutions where he is or will be incarcerated, as evidenced by his past acts of violence and pattern of violence, his possession of a shank or sharpened instrument on at least two occasions while in pretrial custody, and his lack of remorse for his violent acts, including the murders of E.E.E.M. and S.A.A.T.
- E. The defendant, ELMER ZELAYA MARTINEZ, caused injury, harm, and loss to E.E.E.M. and to E.E.E.M.'s family and friends, as evidenced by E.E.E.M.'s personal characteristics and by the impact of his death upon his family and friends.

#### **IV. STATUTORY THRESHOLD FINDINGS UNDER 18 U.S.C § 3591(a) FOR COUNTS 6 AND 8**

The United States will seek to prove the following statutory threshold findings to establish the defendant's eligibility for the imposition of the death penalty in relation to Counts 6 and 8 pertaining to the kidnapping and murder of S.A.A.T.:

- A. The defendant, ELMER ZELAYA MARTINEZ, was 18 years of age or older at the time of the offenses. 18 U.S.C. § 3591(a).
- B. The defendant, ELMER ZELAYA MARTINEZ, intentionally killed S.A.A.T. 18 U.S.C. § 3591(a)(2)(A).

- C. The defendant, ELMER ZELAYA MARTINEZ, intentionally inflicted serious bodily injury that resulted in the death of S.A.A.T. 18 U.S.C. § 3591(a)(2)(B).
- D. The defendant, ELMER ZELAYA MARTINEZ, intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and S.A.A.T. died as a direct result of such act. 18 U.S.C. § 3591(a)(2)(C).
- E. The defendant, ELMER ZELAYA MARTINEZ, intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life, and S.A.A.T. died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

**V. STATUTORY AGGRAVATING FACTORS UNDER 18 U.S.C. § 3592(c) FOR COUNTS 6 AND 8**

The United States will seek to prove the following statutory aggravating factors to justify the imposition of the death penalty against the defendant in relation to Counts 6 and 8 pertaining to the kidnapping and murder of S.A.A.T.:

- A. The death of S.A.A.T. occurred during the defendant's, ELMER ZELAYA MARTINEZ's, commission of the offense of kidnapping (18 U.S.C. § 1201). 18 U.S.C. § 3592(c)(1).
- B. The defendant, ELMER ZELAYA MARTINEZ, committed the offenses in an especially heinous, cruel, or depraved manner in that they involved torture and serious physical abuse to S.A.A.T. 18 U.S.C. § 3592(c)(6).

C. The defendant, ELMER ZELAYA MARTINEZ, committed the offenses after substantial planning and premeditation to cause the death of S.A.A.T. 18 U.S.C. § 3592(c)(9).

D. The defendant, ELMER ZELAYA MARTINEZ, committed the offenses against S.A.A.T., who was a particularly vulnerable victim due to his youth. 18 U.S.C. § 3592(c)(11).

**VI. OTHER NON-STATUTORY AGGRAVATING FACTORS UNDER 18 U.S.C. § 3593(a) AND (c) FOR COUNTS 6 AND 8**

The United States will seek to prove the following non-statutory aggravating factors to justify the imposition of the death penalty against the defendant in relation to Counts 6 and 8 pertaining to the kidnapping and murder of S.A.A.T.:

A. The defendant, ELMER ZELAYA MARTINEZ, engaged in a pattern of criminal activity, including a pattern of violence, threats of violence, and related acts, as demonstrated by, but not limited to, the following aggravating factors:

1. In and around the summer of 2016, the defendant, ELMER ZELAYA MARTINEZ, assaulted and stabbed individuals who he believed were rival gang members.
2. In and around the summer of 2016, the defendant, ELMER ZELAYA MARTINEZ, kidnapped S.A.G. for the purpose of murdering him. However, S.A.G. was able to escape.
3. On or about August 28, 2016, the defendant, ELMER ZELAYA MARTINEZ, conspired to kidnap and murder, and did kidnap and murder, E.E.E.M. because the defendant, ELMER ZELAYA MARTINEZ, and other members and associates of MS-13 believed that E.E.E.M. was a member of a rival gang.

- B. The defendant, ELMER ZELAYA MARTINEZ, committed the offenses in part to increase or maintain his position in MS-13.
- C. The defendant, ELMER ZELAYA MARTINEZ, kidnapped and murdered S.A.A.T. because he believed that S.A.A.T. was cooperating with law enforcement.
- D. The defendant, ELMER ZELAYA MARTINEZ, made use of a minor individual (*i.e.*, a person under the age of 18) to participate in the offenses.
- E. The defendant, ELMER ZELAYA MARTINEZ, has displayed no remorse for the offenses, as demonstrated by his actions and words, including, but not limited to, celebrating the death of S.A.A.T. and bragging about killing him.
- F. The defendant, ELMER ZELAYA MARTINEZ, poses a future danger to others in that he is likely to commit, and direct others to commit, additional acts of violence in any setting, including acts of violence and threats of violence against witnesses who may testify against him in the future and against prison guards and other officials at institutions where he is or will be incarcerated, as evidenced by his past acts of violence and pattern of violence, his possession of a shank or sharpened instrument on at least two occasions while in pretrial custody, and his lack of remorse for his violent acts, including the murders of E.E.E.M. and S.A.A.T.
- G. The defendant, ELMER ZELAYA MARTINEZ, caused injury, harm, and loss to S.A.A.T. and to S.A.A.T.'s family and friends, as evidenced by S.A.A.T.'s personal characteristics and by the impact of his death upon his family and friends.

The United States further gives notice that, in support of the imposition of a sentence of death, it intends to rely upon all of the evidence admitted by the Court at the guilt phase of the trial and the offenses of conviction as alleged in the Second Superseding Indictment, as such evidence relates to the background and character of the defendant, ELMER ZELAYA MARTINEZ, his moral culpability, his future dangerousness, and the nature and circumstances of the offenses charged in the Second Superseding Indictment.

Respectfully submitted,

G. Zachary Terwilliger  
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By: /s/  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 6, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all counsel of record.

\_\_\_\_\_/s/\_\_\_\_\_  
Rebeca H. Bellows  
Assistant United States Attorney